



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
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June 18, 2012

Herschel S. Crain
DOC 918824
3038 W. 850 S.
Bunker Hill, Indiana 46914

Re: Formal Complaint 12-FC-157; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction

Dear Mr. Crain:

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Correction ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Robert D. Bugher, Chief Counsel, responded on behalf of the Department. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you submitted a written request for records to the Department on May 21, 2012. As of June 15, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that you have yet to receive any response from the Department.

In response to your formal complaint, Mr. Bugher advised that the Department has no record of receiving your request for records. Regardless, the records that you have requested that are maintained by the Department have been collected and will be provided to you upon receipt of payment.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See I.C. § 5-14-3-1. The Department is a public agency for the purposes of the APRA. See I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Department's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. See I.C. § 5-14-3-3(a).

The Department maintains that it did not receive a request from you. As previous Public Access Counselor's have provided, the Public Access Counselor is not a finder of fact. *See Opinion of the Public Access Counselor 10-FC-15*. Consequently, I express no opinion as to whether or not Department received your request. Under the APRA, if a request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See I.C. § 5-14-3-9(b)*. A public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. *See I.C. §5-14-3-9(c)*. If the Department received your request and did not respond to it within these timeframes, it acted contrary to the APRA. However, if the Department did not receive your request, it was not obligated to respond to it. As the Department has provided that all records maintained by it that are responsive to your request will be provided upon receipt of payment, I trust that this is in satisfaction of your formal complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that the Department did not violate the APRA if it never received your request.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Robert D. Bugher